



C.M.A.No.2162 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2023

CORAM :

THE HON'BLE MR. JUSTICE P.VELMURUGAN

C.M.A.No. 2162 of 2018

and

C.M.P.No.16899 of 2018

1.R.Munusamy
2.Tamilvani Munusamy

... Appellants

Vs.

J.Raja

... Respondent

Civil Miscellaneous Appeal filed under Section 47 of Guardian and Wards Act to set aside the fair and decreetal order passed by the Principal District Judge, Vellore in G.W.O.P.No.11 of 2013 dated 06.06.2018.

For Appellants : Mr.L.Thilak Rangaswami

For Respondent : No appearance



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J U D G M E N T

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The Civil Miscellaneous Appeal is filed against the order dated 06.06.2018 passed in G.W.O.P.No.11 of 2013 by the learned Principal District Judge, Vellore.

2. The first appellant is the paternal grand father and the second appellant is the paternal grand mother and the respondent is the father of the minor child R.Gnavin Chandresh. The mother of the child passed away on 07.10.2012. After the death of the mother of the child, the respondent herein/father of the child filed G.W.O.P.No.11 of 2013 on the file of the Principal District Court, Vellore, seeking custody of the child. The said petition was allowed by directing the appellants herein to handover the custody of the minor child to the custody of his father/respondent herein. Assailing the said order, the appellants have filed the present appeal.

3. The learned counsel for the appellants submitted that the minor child was born on 21.09.2011 and the mother of the child, who is the daughter of the appellants herein, died on 07.10.2012 and since then, the



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child was with the custody of his grand parents and the respondent was not taking any care of his child. The Court below failed to appreciate the entire facts and allowed the petition, which warrants interference by this Court.

4. Heard the learned counsel for the appellant and perused the materials. There is no representation for the respondent.

5. Admittedly, the minor child R.Gnavin Chandresh is under the custody of his maternal grand parents. After death of the mother of the child, the appellants herein had taken the custody of the child in the year 2012. Thereafter, the respondent filed custody O.P in the year 2013 itself. Though the appellants have not established that the respondent/father was acting against the interest of the child, the Court below ordered for custody of the child to the respondent/father. Without giving the custody of the child, the appellants have filed the present appeal with an allegation that the child is with them for the past 13 years and the respondent is not taking care of the child.

6. On a perusal of the records, it is seen that the minor child



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was born on 21.09.2011, and the mother of the child passed away on 07.10.2012. Thereafter, the appellants herein had taken the custody of the child. Since the appellants refused to see the child, the respondent, who is the father as well as the natural guardian, filed the petition within 1 ½ years i.e. in the year 2013. The contention of the learned counsel for the appellants that the child is with them for the past 13 years, is not acceptable, since the respondent/father approached the Court following due process of law and pending proceedings, the child was only with the appellants/grand parents. It is further seen from the records that the respondent/father is ready to take the custody of the child.

7. Since the natural guardian is available, the custody of the child would be given to the natural guardian, unless there is any adverse interest pleaded against the natural guardian. In the case on hand, the appellants have not established any adverse interest against the respondent/natural guardian.

8. In the light of the above facts and circumstances, this Court



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is of the opinion that there is no perversity or infirmity in the impugned order passed by the Court below and hence, this appeal is liable to be dismissed. The appellants/grand parents are directed to handover the custody of the minor child R.Gnavin Chandresh to the respondent/father of the child on or before 22.09.2023.

9. With the above directions, this Civil Miscellaneous Appeal is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

14.09.2023

Note : Issue order copy on 15.09.2023

Index: Yes/No

Speaking Order/Non-Speaking Order

Neutral Citation Case : Yes/No

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To

1.The Principal District Judge,
Vellore.

2.The Section Officer,
V.R.Section,
High Court, Madras.



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P.VELMURUGAN, J.

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